

EPA REGION VIII
DRINKING WATER BRANCH

UNDERGROUND INJECTION CONTROL PROGRAM

MEMORANDUM OF AGREEMENT

BETWEEN

The State of Utah
Department of Health
Division of Environmental Health

AND

The United States
Environmental Protection Agency
Region VIII

I. INTRODUCTION

This Memorandum of Agreement ("Agreement") establishes policies, responsibilities and procedures for the State of Utah Underground Injection Control Program ("State Program") as authorized by Part C of the Safe Drinking Water Act (P.L. 93-523 as amended by P.L. 95-190 and 96-502) ("SDWA or the Act"). An approvable State Program covering injection practices for Classes I, III, IV and V must meet the regulatory requirements in effect under Section 1421 of the Act (40 CFR 122, 123, 124 and 146 effective July 24, 1980 and revised effective March 5, 1982).

This Agreement is entered into by the State of Utah and signed by Marvin H. Maxell, Acting Director of the Division of Environmental Health, (hereafter, "the State or Director") with the United States Environmental Protection Agency, Region VIII and signed by Steven J. Durham, Regional Administrator (hereafter, "EPA" or "Regional Administrator"). This Agreement shall become effective when approved by the Administrator.

II. POLICIES AND AGREEMENTS

A. Lead Agency Responsibilities

The lead agency, Department of Health, Division of Environmental Health, Bureau of Water Pollution Control, which receives the annual program grant, as designated by the Governor of the State, is also the lead agency to coordinate the State Program. This lead agency shall coordinate the State Program to facilitate communication between EPA and the State agencies having program responsibilities. These responsibilities shall include, but not be limited to, the submission of grant applications, reporting and monitoring results and annual report requirements. The Division of Oil, Gas and Mining is responsible for and has authority over all Class II injection wells. The Bureau of Water Pollution Control is responsible for and has authority over all Class I, III, IV, and V injection wells. Each State agency is responsible for administering the State Program for the injection wells under its jurisdiction including, but not limited to, reports, permits, monitoring and enforcement actions. The Division of Environmental Health shall assure the equitable and efficient distribution of UIC grant funds to the participating agencies which have responsibilities under this agreement for the UIC program.

B. Review and Modification

This Agreement shall be reviewed annually as part of the annual program grant and State/EPA Agreement ("SEA") process. The annual program grant and the SEA shall be consistent with this Agreement and may not override this Agreement.

This Agreement may be modified upon the initiative of the State or the EPA. Modifications must be in writing and must be signed by the Director and the Regional Administrator. Modifications become effective when approved by the Administrator. Modifications may be made by revision prior to the effective date of this Agreement or subsequently by addendum attached to this Agreement and consecutively numbered, signed, and dated.

C. Conformance with Laws and Regulations

The Director shall administer the UIC program consistent with the State's submission for program approval (including the Program Description, Part VII of the Utah Wastewater Disposal Regulations, and Title 26, Chapter 11 of the Utah Water Pollution Control Act), this MOA, the SDWA, current federal policies and regulation, promulgated minimum requirements, priorities established as part of the annually approved State UIC grant, and any separate working agreements which shall be entered into with the Regional Administrator as necessary for the full administration of the UIC program.

D. Responsibilities of Parties

Each of the parties has responsibilities to assure that the UIC requirements are met. The parties agree to maintain a high level of cooperation and coordination between State and EPA staffs in a partnership to assure successful and effective administration of the UIC program. In this partnership the Regional Administrator will provide to the Director on a continuing basis technical and policy assistance or program matters.

The Regional Administrator is responsible for keeping the Director apprised of the meaning and content of Federal guidelines, technical standards, regulations, policy decisions, directives, and any other factors which affect the UIC program.

The strategies and priorities for issuance, compliance monitoring and enforcement of permits, and implementation of technical requirements are established in the State's Program Description, the annual SEA, or in subsequent working agreements. If requested by either party, meetings will be scheduled at reasonable intervals between the State and EPA to review specific operating procedures, resolve problems, or discuss mutual concerns involving the administration of the UIC program.

E. Sharing of Information

The Director shall promptly inform the Regional Administrator of any proposed, pending or enacted modification to laws, regulations or guidelines, and any judicial decisions or administrative actions which might affect the State Program and the Division's authority to administer the program. The Director shall promptly inform the Regional Administrator of any resource allocation changes (e.g. personnel budget, equipment, etc.) which might affect the State's ability to administer the program.

Any information obtained or used by the State under its UIC program shall be available to EPA upon request without restriction. If the information has been submitted to the State under a claim of confidentiality, the State must submit that claim to EPA when providing this information. Any information obtained from the State and subject to a claim of confidentiality will be treated in accordance with 40 CFR Part 2. If EPA obtains information from the State that is not claimed to be confidential, EPA may make that information available to the public without further notice.

EPA shall furnish to the State the information in its files which the State needs to implement the State Program, subject to EPA regulations governing confidentiality (40 CFR Part 2) and Federal provisions governing data transfer.

F. Program Revision

Within 270 days of any amendment to any regulations promulgated at 40 CFR Parts 122, 123, 124 or 146 as issued under Section 1421 of the SDWA, the State shall submit notice to EPA showing that the State Program meets the revised or added requirement.

G. General Provisions

Nothing in this Agreement is intended to affect any UIC or program requirement, including any standards or prohibitions, established by State or local law as long as the State or local requirements are not less stringent than: (1) any set forth in the UIC regulations; or (2) other requirements or prohibitions established under the SDWA or applicable regulations.

Nothing in this Agreement shall be construed to limit the authority of the EPA to take action pursuant to Sections 1421, 1422, 1423, 1424, 1425, 1431 or other Sections of the SDWA.

H. Final Question Resolution

The purpose of this section is to resolve questions and/or concerns remaining after a revision to the Program Description and Permit Application Package.

1. Injection Approval: As noted on page six of the Program Description, Water Pollution Control Committee approval must be obtained prior to the initiation of injection operations. It is agreed that prior to granting approval to operate a Class I well the information in 40 CFR 146.14 (b)(1-7) will be considered. Further, it is agreed that prior to granting approval to operate a Class III well the information in 40 CFR 146.34 (b)(1-6) will be considered. When feasible, the regulations (Part VII, Wastewater Disposal Regulations, UIC Program) will be revised to include this agreement.
2. Class IV Injection Well Ban: It is agreed that it is a policy of the State of Utah, Division of Environmental Health to prevent Class IV type injections. In effect, this policy bans Class IV type injections.
3. Mapping Requirements: It is agreed that site-specific mapping requirements will be specified for the permit applicant during the pre-application conference as discussed in the Program Description.
4. Definition of Fault: It is agreed that the Division of Environmental Health will use as a definition of fault a "... surface or zone of rock fracture along which there has been displacement". This definition is from the UIC Criteria and Standards Regulations (40 CFR 146.03). When feasible, the State Regulations (7.1.11) will be revised consistent with the above definition.

III. PERMITTING

A. General

The Division is responsible for drafting, circulating, issuing, modifying, reissuing, and terminating UIC permits, and shall do so pursuant to State and Federal Laws, Rules and Regulations. The procedures are detailed in the State's application for UIC primacy.

B. Transfer of Responsibilities from EPA

The Regional Administrator shall transfer from EPA to the State any pending permit, applications and any other information relevant to program operation not already in the possession of the Director when Utah assumes primacy for the program.

IV. COMPLIANCE MONITORING

A. General

The State shall operate a timely and effective compliance monitoring system to track compliance with permit conditions and program requirements. For purposes of this Agreement the term "compliance monitoring": shall refer to all efforts associated with assuring full compliance with UIC program requirements.

B. Compliance Schedule

The State agrees to maintain procedures to receive, evaluate, retain and investigate all notices and reports that are required by permit compliance schedules and program regulations. These procedures shall also include the necessary elements to investigate the failure of persons required to submit such notices and reports. The State shall initiate appropriate compliance actions when required information is not received or when the reports are not submitted.

C. Review of Compliance Reports

The State shall conduct a timely and substantive review of all such reports to determine compliance status. The State shall operate a system to determine if: (1) the reports required by permits and program regulations are submitted; (2) the submitted reports are complete and accurate; and (3) the permit conditions and program requirements are met. The reports and notices shall be evaluated for compliance status in accordance with the State compliance program and the program requirements.

D. Inspection and Surveillance

The Director agrees to have inspection and surveillance procedures to determine compliance or noncompliance with the applicable requirements of the UIC program. Surveys or other methods of surveillance shall be utilized to identify persons who have not complied with permit applications or other program requirements. Any compilations, index, or inventory obtained for such facilities or activities shall be made available to the Regional Administrator upon request.

The Director shall conduct periodic inspections of the facilities and activities subject to regulatory requirements. These compliance monitoring inspections shall be performed to assess compliance with all UIC permit conditions or UIC program requirements and includes selecting and evaluating a facility's monitoring and reporting program. These inspections shall be conducted to determine the compliance or noncompliance with the issued permits, verify the accuracy of the information submitted by permittees in reporting forms and monitoring and other methods to provide the information. The State shall also maintain a program to investigate information obtained regarding violations of the applicable program requirements.

E. Information from the Public

The Director shall provide opportunity for the public to submit information on violations, and to have procedures for receiving and ensuring proper consideration of the information.

F. Authority to Enter

The State Director (and other State officials) engaged in compliance monitoring and evaluation has the authority to enter any site or premises subject to regulation, or to review and copy the records of relevant program operations where such records are kept (Utah code annotated Section 26-11-14).

G. Admissibility

Any investigatory inspection shall be conducted and samples and other information collected in a manner to provide evidence admissible in an enforcement proceeding or in court.

V. ENFORCEMENT

A. General

The State is responsible for taking timely and appropriate enforcement action against persons in violation of program requirements, compliance schedules, technical requirements, permit conditions, and other UIC program requirements. This includes violations detected by State or Federal inspections.

Failure by the State to initiate enforcement action against a substantive violation may be the basis for EPA's determination that the State has failed to take timely enforcement action.

B. Enforcement Mechanism

The State shall restrain immediately and effectively any person engaging in any unauthorized activity or operation which is endangering or causing damage to public health or the environment as applicable to the program requirements. The Division of Environmental Health, through the Utah Water Pollution Control Committee has the authority to sue in courts of competent jurisdiction to prohibit any threatened or continuing violation of any program requirement. As specified in Utah code 26-11-16, the State is authorized to sue to recover civil penalties and criminal remedies as established in 40 CFR 123.9.

C. Public Participation

The State provides the public an opportunity to participate in the State enforcement process as specified in 40 CFR 123.9 (d)(2).

D. Assessment of Fines

The State has authority to seek civil penalties that are appropriate to the violation as required in 40 CFR 123.9 (c).

VI. EPA OVERSIGHT

A. General

EPA, Region VIII shall oversee the State's administration of the UIC program on a continuing basis to assure that such administration is consistent with this MOA, the State UIC grant application, the State/EPA Agreement, and all applicable requirements embodied in current regulations, policies and federal law.

In addition to the specific oversight activities listed in this section, EPA may, from time to time request, and the State shall submit specific information and provide access to files necessary for evaluating the Director's administration of the UIC program.

B. Quarterly Noncompliance Reports

The State shall submit to the Regional Administrator quarterly noncompliance reports (as specified in 40 CFR Part 122.18 (a)) on major facilities in accordance with the following schedule:

<u>Quarter</u>	<u>Report Due to Regional Administrators</u>
January, February March	- due May 31
April, May, June	- due August 31
July, August, September	- due November 30
October, November, December	- due February 28

The State shall submit the noncompliance reports in the required format (40 CFR Part 122.18 (a)(1)) including the current status and outcome of any actions taken by the Director against those who are not in compliance.

For purposes of the program reporting requirements under 40 CFR Part 122.18 a major facility will be defined as the following:

- All Class I injection wells
- Class III solution mining wells (uranium only)
- All Class IV wells

C. Annual Noncompliance Reports

The State shall submit annual noncompliance reports (as specified in 40 CFR Part 122.18 (c)(1)) on nonmajor permittees. The period for annual reports shall be for the calendar year ending December 31, with reports completed and available to the public no more than 60 days later.

D. Immediate Reporting on Noncompliance

The Director shall immediately notify the Regional Administrator by telephone, or otherwise, of any major imminent hazard to public health resulting from endangerment of an underground source of drinking water by well injection.

E. Annual Program Report

The State shall submit an annual program report to the Regional Administrator in accordance with 40 CFR Part 122.18 (c)(4)(i). This report shall be for the calendar year ending December 31, with the report completed and available to the public no more than 60 days later.

F. Mid-Course Evaluation Reports

In addition to the annual program report and noncompliance reports, the State shall submit the midcourse evaluation information (as required by 40 CFR Part 122.18 (c)(4)(ii) and Parts 146.15, and 146.35) to EPA by February 28, and August 31, of each of the first two years of program operation after State Program approval. The August 31, submission shall be for the six-month reporting period from January through June and the February 28, submission shall be for the six-month reporting period from July through December. After the first submission, the subsequent three reports may reference the original submission.

G. Class V Reports

Within three years of program approval, the Director shall complete and submit to EPA a report on Class V wells in the State as specified in 40 CFR 146.52 (b).

H. Review of Permits

EPA, Region VIII will review and comment on a sampling of State permits. EPA will review approximately 15% of all permits issued by the Division (25% during the first year of primacy). The following are areas in which EPA will make arrangements with the State to review and comment on State permits:

1. Operators found to be endangering underground sources of drinking water.
2. Special conditions or additional requirements prescribed by the Director to prevent the migration of fluids into underground sources of drinking water.
3. Permits issued by the Director through a waiver of the requirements.
4. Permits of a major facility.
5. Any permits found in noncompliance or are anticipated to be in noncompliance.
6. Permits being reviewed for modification including reissuance or revocation.
7. Permits issued when all relevant facts were not considered, misrepresented, or were not fully disclosed.
8. Facilities permitted under more than one program and found to be in noncompliance.
9. Changes made in the State's permit-issuing procedures.
10. Permits issued on an area basis.
11. Changes of status in the authorization by rule.
12. Permits issues to a Class V operation.

The specific areas to be reviewed will be determined in the context of the annual State/EPA agreement negotiations.

I. EPA Inspection of Facilities

EPA may conduct periodic site and activity inspections on a sample of injection wells operated under permit or authorized by rule. Operations having the greatest potential to endanger underground drinking water sources (USDW) will receive priority in making site/inspection decisions. The following operations will be considered in selecting facilities for inspection and review as a part of EPA's oversight responsibilities:

1. All Class I injection wells including hazardous waste disposal wells.
2. Class III solution mining wells (including uranium, potash, and salt).
3. All Class IV wells.
4. All permits issued under a waiver (40 CFR 122.43).
5. Any Class V well that receives a permit during the first three years after program approved.

If possible facility inspections will be conducted jointly with the State, both parties to this agreement shall give the other adequate notice (minimum of seven (7) working days) to facilitate joint facility inspections.

The Regional Administrator may choose to conduct inspections independently. In that case, the Regional Administrator shall notify the Director of any proposed facility inspections within the State of Utah at least seven (7) working days before any inspection. The Regional Administrator may waive this procedure for emergency situations or other reasons where it is impossible to give advance notification. The State will not use advance notification information to inform the person whose property is to be entered of the pending inspection.

J. Aquifer Exemptions

Any aquifer (USDW) designated by the Director for exempt status under the criteria of 40 CFR 146.04 and submitted as a part of UIC primacy application will not be final until approved by the Administrator as part of the State program.

Following program approval, the Director may after notice and opportunity for public hearing, identify additional exempted aquifers. If the Director proposes to exempt the aquifer under the criteria of 40 CFR 146.04 (b), the designation will be considered a program revision to be reviewed under 40 CFR 123.13 (b). If the Director proposes to exempt the aquifer under the criteria of 40 CFR 146.04 (c), the Director will submit a written request for exemption to the Administrator. If the Administrator does not disapprove the exemption request within 45 days of receipt, the exemption will become final.

K. Mechanical Integrity

The Director may allow the use of a test to demonstrate mechanical integrity other than those listed in the Program Description. Any alternative mechanical integrity test must receive written approval from the Administrator prior to implementation. Approval will be obtained according to the procedures specified in 40 CFR 146.08 (d).

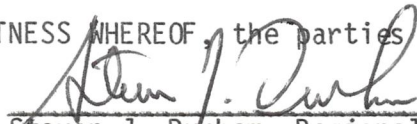
L. Program Evaluation

EPA shall conduct at least annually performance evaluations of the State Program using the State quarterly reports, annual noncompliance reports, program reports, and other requested information to determine State Program consistency with the program submission, SDWA and applicable regulations, and applicable guidance and policies. The review will not only include a review of financial expenditures, but reviews on progress towards program implementation, changes in the program description, and efforts towards progress on program elements.

The Environmental Protection Agency shall submit a summary of the evaluation findings to the State outlining the deficiencies in program performance, and recommendations for improving State operations. The report also might provide guidance for the development of upcoming grant application. The State shall have 15 working days from the date of receipt to concur with or comment on the findings and recommendations.


IN WITNESS WHEREOF, the parties have executed this Agreement.

Approved:


Steven J. Durham, Regional Administrator
Region VIII
U.S. Environmental Protection Agency

8/16/82
Date

Approved:


Marvin H. Maxell, Acting Director
Division of Environmental Health
State of Utah

8/11/82
Date